

Paul T. Trimmer  
Nevada State Bar No. 9291  
**JACKSON LEWIS, P.C.**  
3800 Howard Hughes Pkwy., Suite 600  
Las Vegas, NV 89169  
Tel: (702) 921-2460  
Email: [trimmerp@jacksonlewis.com](mailto:trimmerp@jacksonlewis.com)

Veronica T. von Grabow  
*Admitted pro hac vice*  
950 17th Street, Suite 2600  
Denver, CO 80202  
Tel: (303) 225-2419  
Email: [veronica.vongrabow@jacksonlewis.com](mailto:veronica.vongrabow@jacksonlewis.com)

*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DANIELLE CURLEY, on behalf of herself  
and all others similarly situated

Plaintiff,

vs.

CUSTOMER CONNEXX LLC; ARCA,  
INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 2:18-cv-00233-KJD-GWF

**DEFENDANTS' ANSWER**  
**TO AMENDED COMPLAINT**

Defendants Customer Connexx, LLC and ARCA, Inc.<sup>1</sup> (“Defendants”), by and through their undersigned counsel, file their Answer to Plaintiffs’ First Amended Collective and Class Action Complaint (“Amended Complaint”), and show the Court as follows:

Answering the introductory paragraph of Plaintiffs’ Amended Complaint, Defendants deny that each allegation in the Complaint has evidentiary support or is likely to have evidentiary support

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<sup>1</sup> JanOne, Inc., formerly known as Appliance Recycling Centers of America, Inc., is misidentified in the Complaint as “ARCA, Inc.” Defendants maintain that ARCA, Inc. is not a proper party because it did not employ Plaintiffs or any of the persons that Plaintiffs seek to represent. Nothing herein should be interpreted to the contrary.

1 after further investigation and discovery. Defendants deny any remaining allegations in the  
2 introductory paragraph.

### 3 **JURISDICTION AND VENUE**

4 1. The allegations of Paragraph 1 contain legal conclusions to which no answer is  
5 required. If, however, an answer is required, Defendants admit only that this Court has jurisdiction  
6 over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331 and has supplemental jurisdiction over  
7 Plaintiffs' remaining state law claims pursuant to 28 U.S.C. § 1367. Defendants deny all of the  
8 remaining allegations contained in paragraph 1 of Plaintiffs' Amended Complaint.

9  
10 2. Defendants admit only that Plaintiffs are seeking to recover allegedly unpaid wages  
11 under various theories of Nevada law. Defendants deny that Plaintiffs can recover under any of  
12 those theories and deny that Plaintiffs made a proper demand for wages under Nev. Rev. Stat. §  
13 608.140 or by agreement of the parties. Defendants deny all remaining allegations contained in  
14 paragraph 2 of Plaintiffs' Amended Complaint.

15 3. The allegations of Paragraph 3 contain legal conclusions to which no answer is  
16 required. If, however, an answer is required, Defendants admit only that Defendant Customer  
17 Connexx LLC conducts business in this judicial district, that the allegations arise from Clark  
18 County, Nevada, and that venue is proper in this United States District Court because it is the district  
19 and division embracing the place where the State Court Action was pending prior to removal.  
20 Defendants deny all of the remaining allegations contained in paragraph 3 of Plaintiffs' Amended  
21 Complaint.  
22

### 23 **PARTIES**

24 4. Defendants admit only that Plaintiff Cariene Cadena is a person and, for a period of  
25 time, was an employee of Defendant Customer Connexx LLC at its Las Vegas facility and was  
26 treated as non-exempt and paid hourly rates. Defendants lack knowledge or information sufficient  
27 to form a belief about the truth of the allegations regarding her residence. Defendants deny all  
28

1 remaining allegations contained in paragraph 4 of Plaintiffs' Amended Complaint.

2 5. Defendants admit only that Plaintiff Andrew Gonzales is a person and, for a period  
3 of time, was an employee of Defendant Customer Connexx LLC at its Las Vegas facility and was  
4 treated as non-exempt and paid hourly rates. Defendants lack knowledge or information sufficient  
5 to form a belief about the truth of the allegations regarding his residence. Defendants deny all  
6 remaining allegations contained in paragraph 4 of Plaintiffs' Amended Complaint.

7  
8 6. Defendants admit only that Defendant Customer Connexx LLC is a limited liability  
9 company registered in Nevada. Defendants further admit that Defendant Customer Connexx LLC  
10 is an employer engaged in commerce. Defendants deny all remaining allegations contained in  
11 paragraph 6 of Plaintiffs' Amended Complaint.

12 7. Defendants deny the allegations contained in paragraph 7 of Plaintiffs' Amended  
13 Complaint.

14 8. Defendants deny the allegations contained in paragraph 8 of Plaintiffs' Amended  
15 Complaint.

16 9. Defendants deny the allegations contained in paragraph 9 of Plaintiffs' Amended  
17 Complaint.

18 10. Defendants lack knowledge or information sufficient to form a belief about the truth  
19 of the allegations regarding unidentified "DOES 1-50."

20  
21 **FACTUAL ALLEGATIONS**

22 11. Defendants admit only that Customer Connexx LLC operates a customer-care and  
23 contact center providing scheduling and customer service. Defendants deny all remaining  
24 allegations contained in paragraph 11 of Plaintiffs' Amended Complaint.

25 12. Defendants admit only that Customer Connexx LLC exercised control, to some  
26 extent, over Plaintiffs' hours and other working conditions. Defendants deny all of the remaining  
27  
28

1 allegations contained in paragraph 12 of Plaintiffs' Amended Complaint.

2 13. Defendants admit only that Plaintiffs were employed by Customer Connexx LLC as  
3 employees at its call center in Las Vegas for a period of time. Defendants deny all of the remaining  
4 allegations contained in paragraph 13 of Plaintiffs' Amended Complaint.

5 14. Defendants admit only that Customer Connexx employed Plaintiff Cadena for  
6 approximately the dates stated. Defendants deny all remaining allegations contained in  
7 paragraph 14 of Plaintiffs' Amended Complaint.

8 15. Defendants admit only that Customer Connexx employed Plaintiff Gonzales for  
9 approximately the dates stated. Defendants deny all remaining allegations contained in  
10 paragraph 15 of Plaintiffs' Amended Complaint.

11 16. Defendants admit only that Plaintiffs worked various schedules. Defendants deny  
12 all of the remaining allegations contained in paragraph 16 of Plaintiffs' Amended Complaint.

13 17. Defendants deny the allegations contained in paragraph 17 of Plaintiffs' Amended  
14 Complaint.

15 18. Defendants deny the allegations contained in paragraph 18 of Plaintiffs' Amended  
16 Complaint.

17 19. Defendants deny the allegations contained in paragraph 19 of Plaintiffs' Amended  
18 Complaint.

19 20. Defendants deny the allegations contained in paragraph 20 of Plaintiffs' Amended  
20 Complaint.

21 21. Defendants deny the allegations contained in paragraph 21 of Plaintiffs' Amended  
22 Complaint.

23 22. Defendants deny the allegations contained in paragraph 22 of Plaintiffs' Amended  
24 Complaint.

1           23. Defendants deny the allegations contained in paragraph 23 of Plaintiffs' Amended  
2 Complaint.

3                           **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

4           24. Defendants re-allege and incorporate by reference each and every response set forth  
5 in the preceding paragraphs of this Answer.

6           25. Defendants admit only that Plaintiffs seeks bring this action on behalf of themselves  
7 and others allegedly similarly situated as a collective action and as a class action. Defendants deny  
8 that Plaintiffs are similarly situated to any other individuals, deny that this action may be certified  
9 as a class or collective action, and deny that the class definitions alleged are proper. Defendants  
10 deny all remaining allegations contained in paragraph 25 of Plaintiffs' Amended Complaint.

11           26. Defendants admit only that Customer Connexx LLC employed Plaintiffs and that  
12 what appears to be consent to sue forms signed by Plaintiffs are attached to the Complaint.  
13 Defendants deny all of the remaining allegations contained in paragraph 26 and all its subparts of  
14 Plaintiffs' Amended Complaint.

15           27. Defendants deny the allegations contained in paragraph 27 and all its subparts of  
16 Plaintiffs' Amended Complaint.

17                           **FIRST CAUSE OF ACTION**

18           28. Defendants re-allege and incorporate by reference each and every response set  
19 forth in the preceding paragraphs of this Answer.

20           29. The allegations of Paragraph 29 contain legal conclusions to which no answer is  
21 required. If, however, an answer is required, Defendants admit only that Paragraph 26 quotes a  
22 portion of 29 U.S.C. § 207. Defendants deny that the quoted text is a complete description of  
23 applicable law.

24           30. Defendants deny the allegations contained in paragraph 30 of Plaintiffs' Amended  
25 Complaint.

26           31. Defendants deny the allegations contained in paragraph 31 of Plaintiffs' Amended  
27 Complaint.  
28

1           32. Defendants deny the allegations contained in paragraph 32 of Plaintiffs' Amended  
2 Complaint.

3                                   **SECOND CAUSE OF ACTION**

4           33. Defendants re-allege and incorporate by reference each and every response set forth  
5 in the preceding paragraphs of this Answer.

6           34. The allegations of Paragraph 34 contain legal conclusions to which no answer is  
7 required. If, however, an answer is required, Defendants admit only that Paragraph 31 quotes a  
8 portion of Nev. Rev. Stat. § 608.140. Defendants deny that the quoted text is a complete description  
9 of applicable law, deny that Plaintiffs made a proper demand for wages under Nev. Rev. Stat. §  
10 608.140, and deny that Plaintiffs has not received satisfactory payment. Defendants deny any  
11 remaining allegations contained in paragraph 34 of Plaintiffs' Amended Complaint.

12           35. The allegations of Paragraph 35 contain legal conclusions to which no answer is  
13 required. If, however, an answer is required, Defendants admit only that Paragraph 32 quotes  
14 portions of Nev. Rev. Stat. §§ 608.016, 608.011 and Nev. Admin. Code § 608.115. Defendants  
15 deny that the quoted text is a complete or accurate description of applicable law and deny any  
16 remaining allegations contained in paragraph 35 of Plaintiffs' Amended Complaint.

17           36. Defendants deny the allegations contained in paragraph 36 of Plaintiffs' Amended  
18 Complaint.

19           37. The allegations of Paragraph 37 contain legal conclusions to which no answer is  
20 required. If, however, an answer is required, Defendants deny the allegations contained in  
21 paragraph 37 of Plaintiffs' Amended Complaint.

22           38. Defendants deny the allegations contained in paragraph 38 of Plaintiffs' Amended  
23 Complaint.

24                                   **THIRD CAUSE OF ACTION**

25           39. Defendants re-allege and incorporate by reference each and every response set forth  
26 in the preceding paragraphs of this Answer.

27           40. The allegations of Paragraph 40 contain legal conclusions to which no answer is  
28 required. If, however, an answer is required, Defendants admit only that Paragraph 40 quotes

1 portions of Nev. Const. Art. 15, § 16. Defendants deny that the quoted text is a complete or accurate  
2 description of applicable law and deny any remaining allegations contained in paragraph 40 of  
3 Plaintiffs' Amended Complaint.

4 41. Defendants deny the allegations contained in paragraph 41 of Plaintiffs' Amended  
5 Complaint.

6 42. Defendants deny the allegations contained in paragraph 42 of Plaintiffs' Amended  
7 Complaint.

8 **FOURTH CAUSE OF ACTION**

9 43. Defendants re-allege and incorporate by reference each and every response set forth  
10 in the preceding paragraphs of this Answer.

11 44. The allegations of Paragraph 44 contain legal conclusions to which no answer is  
12 required.

13 45. The allegations of Paragraph 45 contain legal conclusions to which no answer is  
14 required. If, however, an answer is required, Defendants admit only that Paragraph 45 quotes a  
15 portion of Nev. Rev. Stat. § 608.018. Defendants deny that the quoted text is a complete description  
16 of applicable law.

17 46. The allegations of Paragraph 46 contain legal conclusions to which no answer is  
18 required. If, however, an answer is required, Defendants admit only that Paragraph 46 quotes a  
19 portion of Nev. Rev. Stat. § 608.018. Defendants deny that the quoted text is a complete description  
20 of applicable law.

21 47. Defendants deny the allegations contained in paragraph 47 of Plaintiffs' Amended  
22 Complaint.

23 48. The allegations of Paragraph 48 contain legal conclusions to which no answer is  
24 required. If, however, an answer is required, Defendants admit only that the statute of limitations  
25 for some minimum wage violations is two years. Defendants deny the remaining allegations  
26 contained in paragraph 48 of Plaintiffs' Amended Complaint.

27 49. Defendants deny the allegations contained in paragraph 49 of Plaintiffs' Amended  
28 Complaint.

**FIFTH CAUSE OF ACTION**

50. Defendants re-allege and incorporate by reference each and every response set forth in the preceding paragraphs of this Answer.

51. The allegations of Paragraph 51 contain legal conclusions to which no answer is required.

52. The allegations of Paragraph 52 contain legal conclusions to which no answer is required. If, however, an answer is required, Defendants admit only that Paragraph 52 quotes a portion of Nev. Rev. Stat. § 608.020. Defendants deny that the quoted text is a complete description of applicable law.

53. The allegations of Paragraph 53 contain legal conclusions to which no answer is required. If, however, an answer is required, Defendants admit only that Paragraph 53 quotes a portion of Nev. Rev. Stat. § 608.040. Defendants deny that the quoted text is a complete or accurate description of applicable law and deny all of the remaining allegations contained in paragraph 53 of Plaintiffs' Amended Complaint.

54. The allegations of Paragraph 54 contain legal conclusions to which no answer is required. If, however, an answer is required, Defendants admit only that Paragraph 54 quotes a portion of Nev. Rev. Stat. § 608.050. Defendants deny that the quoted text is a complete or accurate description of applicable law and deny all of the remaining allegations contained in paragraph 54 of Plaintiffs' Amended Complaint.

55. Defendants deny the allegations contained in paragraph 55 of Plaintiffs' Amended Complaint.

56. Defendants deny the allegations contained in paragraph 56 of Plaintiffs' Amended Complaint.

57. Defendants deny the allegations contained in paragraph 57 of Plaintiffs' Amended Complaint.

**SIXTH CAUSE OF ACTION**

58. Defendants re-allege and incorporate by reference each and every response set forth in the preceding paragraphs of this Answer.



1           59. Defendants deny the allegations contained in paragraph 59 of Plaintiffs' Amended  
2 Complaint.

3           60. Defendants deny the allegations contained in paragraph 60 of Plaintiffs' Amended  
4 Complaint.

5           61. Defendants deny the allegations contained in paragraph 61 of Plaintiffs' Amended  
6 Complaint.

7           62. Defendants deny the allegations contained in paragraph 62 of Plaintiffs' Amended  
8 Complaint.

9           63. Defendants deny the allegations contained in paragraph 63 of Plaintiffs' Amended  
10 Complaint.

11                           **RESPONSE TO JURY TRIAL DEMAND**

12           Defendants acknowledge that Plaintiffs have demanded a jury trial, but deny that Plaintiffs'  
13 claims are legally or factually viable so as to permit a jury trial and further deny that Plaintiffs are  
14 entitled to any judgment or relief whatsoever.

15                           **RESPONSE TO PRAYER FOR RELIEF**

16           Defendants deny that Plaintiffs or any person who Plaintiffs purport to represent are entitled  
17 to any of the relief sought in subparagraphs (1) through (15) of Plaintiffs' prayer for relief, or any  
18 relief whatsoever.

19                           **GENERAL DENIAL**

20           To the extent not expressly and specifically admitted herein, Defendants deny the  
21 allegations set forth in Plaintiffs' Amended Complaint.

22                           **AFFIRMATIVE OR OTHER DEFENSES**

23                           **FIRST DEFENSE**

24           Plaintiffs' Amended Complaint should be dismissed, in whole or in part, for failure to state  
25 a cause of action upon which relief can be granted.

**SECOND DEFENSE**

Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to assert a claim, are barred to the extent that they seek damages beyond the applicable limitations period.

**THIRD DEFENSE**

Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to assert a claim, are barred to the extent that they have submitted false or inaccurate time records. In such situations, the claims would be barred in whole or in part by estoppel, unclean hands, waiver, and other doctrines.

**FOURTH DEFENSE**

Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to assert a claim, are barred because they were paid all wages due.

**FIFTH DEFENSE**

Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to assert a claim under the FLSA, are barred to the extent that Defendants' actions have been taken in good faith, in conformity with, and reliance upon established rulings, administrative regulations, and interpretations of the FLSA within the meaning of 29 U.S.C. § 259.

**SIXTH DEFENSE**

Defendants' actions have been in good faith and based upon reasonable grounds for believing that such actions were not in violation of the FLSA, within the meaning of 29 U.S.C. § 260. Thus, even if Defendants are found to have violated the FLSA, Plaintiffs are not entitled to liquidated damages under the FLSA.

**SEVENTH DEFENSE**

Plaintiffs' claims against ARCA, Inc. should be dismissed because it did not employ

1 Plaintiffs.

2 **EIGHTH DEFENSE**

3 Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to  
4 assert a claim, are barred, in whole or in part, because any time that has not been compensated  
5 involves only insubstantial or insignificant periods of time, and these periods of time are "*de*  
6 *minimis*" as a matter of law, and are not compensable and do not trigger the beginning or end of  
7 compensable time.  
8

9 **NINTH DEFENSE**

10 Plaintiffs' claims are barred to the extent that Plaintiffs seek compensation for activities that  
11 are non-compensable as preliminary and postliminary activities to Plaintiffs' principal activities  
12 which they are employed to perform. For example, all activities related to booting up and shutting  
13 down a computer and loading and closing programs, to the extent performed by Plaintiffs or other  
14 employees, constitute activities which are preliminary or postliminary to any principal activities  
15 which such employees are employed to perform, and are not compensable.  
16

17 **TENTH DEFENSE**

18 Plaintiffs' claims are barred to the extent that Plaintiffs seek compensation for activities that  
19 are non-compensable under the Portal-to-Portal Act including 29 U.S.C. § 254(a) or equivalent  
20 state law provisions.  
21

22 **ELEVENTH DEFENSE**

23 Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to  
24 assert a claim, are barred, in whole or in part, because to the extent that they seek compensation for  
25 time spent waiting for their shifts to start, as such time is not compensable.  
26  
27  
28

**TWELFTH DEFENSE**

To the extent that Plaintiffs and others seek to use state or common law to enforce rights under the Fair Labor Standards Act, those claims are preempted by federal law.

**THIRTEENTH DEFENSE**

Defendants are entitled to a setoff for any overpayments made to Plaintiffs and others who Plaintiffs seek to represent. Any recovery should be offset to the extent that Plaintiffs or others received premium pay, pay for non-compensable time such as bona fide breaks, or any other forms of overpayments.

**FOURTEENTH DEFENSE**

Plaintiffs' claims are barred because Defendant did not suffer or permit Plaintiffs or the putative class or collective plaintiffs to perform the work alleged or have actual or constructive knowledge of hours of allegedly compensable work.

**FIFTEENTH DEFENSE**

The Fair Labor Standards Act, 29 U.S.C. §216(b), states "No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." That statute prohibits Plaintiffs from asserting any claim that relies on the FLSA to establish the alleged substantive right to unpaid wages, overtime pay, liquidated damages, attorneys' fees, or other relief based on the FLSA, either directly under the FLSA or by any state law claim that depends on successful proof of the alleged FLSA right or obligation, on behalf of any employee who has not given his consent in writing to become such a party and whose consent has not been filed in the court in this action.

**SIXTEENTH DEFENSE**

Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to assert a claim, are barred, in whole or in part, because they cannot establish that any acts or omissions of Defendants were willful.

**SEVENTEENTH DEFENSE**

Plaintiffs' claims, and those claims of any other person on whose behalf Plaintiffs seek to assert a claim, are barred, in whole or in part, due to the doctrine of statute of frauds.

**EIGHTEENTH DEFENSE**

Plaintiffs' allegations in the Complaint do not meet the requirements for a collective action and Plaintiffs cannot meet the requirements of 29 U.S.C. §216(b). Plaintiffs' claims are barred to the extent that Plaintiffs seek to assert claims on behalf of other employees who are not similarly situated for purposes of the FLSA.

**NINETEENTH DEFENSE**

Plaintiffs cannot maintain this action as a class action because Plaintiffs cannot meet the requirements of Rule 23. For example, there are no questions of fact or law common to the proposed class that predominate over any questions affecting only Plaintiffs or individual class members; the representative party or parties will not fairly and adequately protect the interests of the proposed class; and a class action is not an appropriate method for the fair, efficient, and manageable adjudication of this controversy.

**TWENTIETH DEFENSE**

Any award of damages should be barred or limited to the extent that the relief demanded by Plaintiffs is improper, inappropriate, exceeds the scope of permissible damages and remedies, and/or otherwise is not available under the laws upon which her claims rest. Alternatively, in the event that Plaintiffs or any others are granted relief, such relief should be limited by the applicable provisions of any law upon which Plaintiffs' claims rest.

**TWENTY-FIRST DEFENSE**

Plaintiffs seek recovery of multiple claims and damages based upon the same alleged factual events. Recovery of damages as to one of these claims bars recovery of like damages for any other claim(s).

Defendants reserve the right to amend its Answer or add further defenses that may become known after filing of the pleading. Because the Amended Complaint is phrased in conclusory terms, Defendants cannot fully anticipate all defenses which may be applicable to this action. Accordingly, Defendants reserve the right to assert additional defenses or counterclaims in this action.

WHEREFORE, Defendants deny that Plaintiffs or any other persons on whose behalf Plaintiffs seek to assert a claim under the FLSA or state law are entitled to any remedy or relief in this action; Defendants request that the Court dismiss Plaintiffs' claims with prejudice; and Defendants request that it be awarded their attorneys' fees, costs and such further relief as the Court may deem appropriate.

Respectfully submitted this 31st day of January, 2020.

/s/ Veronica T. von Grabow

Paul T. Trimmer  
Nevada State Bar No. 9291  
JACKSON LEWIS, P.C.  
3800 Howard Hughes Pkwy., Suite 600  
Las Vegas, NV 89169  
Tel: (702) 921-2460  
Email: trimmerp@jacksonlewis.com

Veronica T. von Grabow  
*Admitted pro hac vice*  
950 17th Street, Suite 2600  
Denver, CO 80202  
Tel: (303) 225-2419  
Email: veronica.vongrabow@jacksonlewis.com

***Attorneys for Defendants***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 1st day of January 31, 2020, I caused to be served via the Court's CM/ECF Filing, a true and correct copy of the above foregoing **DEFENDANTS' ANSWER TO AMENDED COMPLAINT** properly addressed to the following:

Mark R. Theirman, Esq.  
Joshua D. Buck, Esq.  
Leah L. Jones, Esq.  
THIERMAN BUCK LLP  
7287 Lakeside Drive  
Reno, NV 89511

*Attorneys for Plaintiffs*

/s/ Veronica T. von Grabow  
Employee of Jackson Lewis P.C.